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In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 817

SUPERINTENDENT FIVE CIVILIZED TRIBES, FOR SANDY FOX, CREEK NO. 1263, petitioner

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the United States Board of Tax Appeals (R. 11–18) is reported in 29 B. T. A. 635. The opinions of the Circuit Court of Appeals (R. 23–32) are reported in 75 F. (2d) 183.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered January 9, 1935 (R. 32). The peti-

tion for a writ of certiorari was filed March 26, 1935, and granted April 15, 1935 (R. 33). The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION

The taxpayer is a full-blood Creek Indian. His property and income are restricted and held in trust for him by the Secretary of the Interior. Is his income from sources other than his original allotted lands subject to the Federal income tax?

STATUTES AND REGULATIONS INVOLVED

The pertinent parts of the Revenue Act involved will be found in Appendix A, *infra*, pp. 33–34. The pertinent agreements and statutes dealing with the Creek Indians will be found in Appendix B, *infra*, pp. 35–46. The pertinent regulations of the Interior Department will be found in Appendix C, *infra*, pp. 47–50.

STATEMENT

This is a proceeding for the redetermination of a deficiency in income taxes for the year 1929. The facts were stipulated (R. 9–10), and may be summarized as follows:

Sandy Fox (hereinafter called the taxpayer) is a full-blood restricted Creek Indian, being enrolled opposite Creek Roll No. NB1263. His property both real and personal is restricted and under the direct supervision of the Superintendent of the

Five Civilized Tribes, and under the direction and supervision of the Secretary of the Interior. The income from the taxpayer's allotment is received and held in trust by the Superintendent and invested by him under the direction of the Secretary of the Interior. The income interest from such investments is likewise received and held in trust as part of the taxpayer's restricted fund and property. (R. 9–10.)

For the year 1929 the Superintendent of Five Civilized Tribes filed for the taxpayer an income tax return, in which was included as a part of the net income, an amount of $7,797.42, representing interest upon the taxpayer's restricted funds (R. 8, 10). There was also included in said return an item of $8,351.75 received by said Superintendent as interest on Liberty Bonds held by him as a part of taxpayer's restricted funds. Neither of these sums was subject to taxpayer's demand (R. 10). The total net income thus reported was $16,149.17 (R. 6). The tax shown to be due on the return in the sum of $102.59 was paid by the taxpayer (R. 8).

During the year 1929, the Commissioner of Internal Revenue, under authority of Treasury Decision 3570, refunded to said Superintendent for the taxpayer certain taxes for the years 1914, 1915, and 1916 in the aggregate amount of $4,349.98. There was also refunded during 1929 interest on said refunds in the amount of $3,117.50, said interest being paid to said Superintendent for the taxpayer. This interest is part of taxpayer's restricted fund

and is not subject to his demand. This interest was not included in the 1929 tax return filed for the taxpayer. (R. 10.) The Commissioner added the amount of interest so received to the taxpayer's reported income and determined a deficiency of $167.00 (R. 5–6). From this determination, the Superintendent, on behalf of the taxpayer, appealed to the Board of Tax Appeals, where it was claimed not only that the Commissioner erred in including as income the interest paid in the amount of $3,117.50, but that taxpayer had erred in paying the tax previously reported, because he was not subject to the income tax law for the year 1929 (R. 7–8).

The Board of Tax Appeals in a decision reviewed by the Board held that the taxpayer was not exempt from taxation and sustained the Commissioner's determination (R. 11–18). The Circuit Court of Appeals, by a divided court, affirmed (R. 23–32).

SUMMARY OF ARGUMENT

The Revenue Act levies a tax on every individual on income derived from any source whatever. It clearly was intended to reach the income here in question, unless there is some statutory provision which, in plain language, creates an exemption. There is no such statute. Treaties and legislation dealing with the Five Civilized Tribes exempt from taxation only the original homestead allotment of forty acres and this only for a period of twenty-one years from the date of the homestead

deed, executed at some undisclosed date following the passage of the Act of 1902.

Even if we assume that a tax on income amounts to a direct tax on land, this only means that income from the homestead for this twenty-one-year period is exempt from income taxation. All other income, including interest on investments, is subject to tax.

The mere fact that the taxpayer's property and income are restricted does not exempt him from Federal taxation, nor does the fact that he is a restricted ward of the Government exempt him. This Court has frequently upheld a state tax imposed on a restricted Indian's restricted land. These are stronger reasons for upholding a Federal tax on his income.

The rulings of the Treasury Department, holding that income of the kind in question is taxable, have received legislative approval. The policy of Congress, in cases of this kind, has been one of taxation rather than of immunity.

ARGUMENT

Sandy Fox (hereinafter called the taxpayer) is a full-blood Creek Indian. His property, both real and personal, and the income therefrom, is restricted and under the direct supervision of the Superintendent of the Five Civilized Tribes. The question here is whether certain of this restricted income derived from sources other than the Indian's original allotted lands is exempt from Federal taxation.

As pointed out by the court below, if the exception exists, it must be either (1) because of the nature of the income or (2) because of the status of the taxpayer. We submit that the court was clearly right in holding that neither the character of the income here involved nor the status of the taxpayer respecting such income was such as to give rise to the claimed exemption.

The Sixteenth Amendment gave Congress the power to levy taxes on income, "from whatever source derived." Sections 11 and 12 of the Revenue Act of 1928 (Appendix A, *infra*; p. 33), levy a tax upon "the net income of every individual." Section 22 includes income "from any source whatever." Clearly this language is broad enough to include the income in controversy. By such comprehensive language, Congress intended to exercise its power to the fullest extent and to extend the income tax as far as it could to all species of income. *Heiner* v. *Colonial Trust Co.*, 275 U. S. 232, *Irwin v. Gavit*, 268 U. S. 161, 168; *Helvering* v. *Stockholms &c. Bank*, 293 U. S. 84.

We are met at the very outset, however, with the taxpayer's contention that the Revenue Act, being a general statute, was not intended to apply to the Indians, who are a special, favored class (Br. 9). This Court has definitely ruled against this broad assertion in *Choteau* v. *Burnet*, 283 U. S. 691, where, with reference to similar provisions in an earlier Act, it was said (pp. 694, 696):

> The intent of Congress was to levy the tax with respect to *all residents* of the United States *and upon all sorts of income.* The act does not expressly exempt the sort of income here involved, nor a person having petitioner's status respecting such income, and we are not referred to any other statute which does.
>
> * * * * * *
>
> *The intent to exclude must be definitely expressed, where, as here, the general language of the Act laying the tax is broad enough to include the subject matter.* * * * (Italics supplied.)

See also *Goudy* v. *Meath,* 203 U. S. 146, 149; *The Cherokee Tobacco,* 11 Wall. 616; *Heiner* v. *Colonial Trust Co., supra; Brunt* v. *Commissioner,* 5 B. T. A. 134.[1]

Since Congress clearly intended to tax *all residents* of the United States, *upon all sorts of income* (language clearly broad enough to include the income here in question), we may start with the proposition that no exemption exists in this case unless there is some other statutory provision definitely expressing an intent to exclude. Since there is

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[1] Since those cases Congress has passed several Revenue Acts, making no exemption as to Indians. The rule of implied legislative approval is applicable. A consideration of the cases relied on by taxpayer (Br. 9), holding that general acts of Congress do not apply to Indians, shows that they are laws relative to "their personal and domestic relations with each other" (*Ex parte Crow Dog,* 109 U. S. 556, 570), and not revenue laws.

nothing in the Revenue Act which, even by implication, purports to exempt this income, the exemption, if any, must be found in some other Act of Congress.

The taxpayer relies principally upon the early treaties and statutes dealing with the Five Civilized Tribes. But there is nothing in these early treaties or acts which exempts either the Indian as such or his restricted income.

This Court has frequently had occasion to pass upon the legislation and treaties dealing with the Five Civilized Tribes. *Cherokee Nation* v. *Hitchcock*, 187 U. S. 294; *Tiger* v. *Western Investment Co.*, 221 U. S. 286; *Heckman* v. *United States*, 224 U. S. 413; *Choate* v. *Trapp*, 224 U. S. 665; *English* v. *Richardson*, 224 U. S. 680; *United States* v. *Bartlett*, 235 U. S. 72; *Fink* v. *County Commissioners*, 248 U. S. 399; *Parker* v. *Richard*, 250 U. S. 235; *Sunderland* v. *United States*, 266 U. S. 226; *Shaw* v. *Oil Corp.*, 276 U. S. 575; *Carpenter* v. *Shaw*, 280 U. S. 363. A brief résumé may be helpful.

The Five Civilized Tribes originally inhabited large areas in the southern part of the United States, east of the Mississippi. As this territory became settled the Indian was pushed westward. By treaty and use of force the tribes agreed to take up their abode farther west, out of the way of the white man, on land thereafter designated as Indian territory. It was part of the consideration for the removal that the Indians should pos-

sess this territory unmolested forever, as an independent people, with their own forms of government. Freedom from state or territorial government was guaranteed to them. See Act of March 24, 1832, 7 Stat. 366, 368; Act of August 7, 1856, 11 Stat. 699, 700.

But the white population gradually encroached upon Indian territory. In 1894 it was estimated that one-quarter of a million people had taken up their habitation there. These people desired to substitute their own methods of government for the unsatisfactory tribal administration. However, statehood could not be granted without violating existing Indian treaties. Finally, by Act of March 3, 1893, 27 Stat. 612 (Appendix B, *infra*, p. 36), the Commission of the Five Civilized Tribes, commonly referred to as the Dawes Commission, was created to enter into negotiations with the Five Civilized Tribes for the purpose of extinguishing the national or tribal title to all lands in that territory by alloting it in severalty to the individual Indians. After considerable negotiation the lands of the Muscogee or Creek Tribe were allotted in severalty, pursuant to an agreement known as the Original Creek Agreement (Act of March 1, 1901, c. 676, 31 Stat. 861, Appendix B, *infra*, p. 37). This agreement was amended by the Supplemental Creek Agreement of 1902 (Act of June 30, 1902, 32 Stat. 500, c. 1323, Appendix B, *infra*, p. 38). This supplemental agreement was ratified by the action of the Creek National Council, and approved

by the President of the United States, August 8, 1902. See *Tiger* v. *Western Investment Co.*, *supra*, 221 U. S. 286, 301.[3]

The way was thus cleared for the creation of the State of Oklahoma. But in the enabling Act (c. 3335, 34 Stat. 267, Appendix B, *infra*, p. 39), it was expressly provided that nothing contained in the constitution of the State of Oklahoma should be construed as limiting or impairing the rights of persons or property pertaining to the Indians of Oklahoma Territory (so long as such rights should remain unextinguished), or to limit or affect the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property, or other rights by treaties, agreement, law, or otherwise.

In considering the various Acts of Congress affecting the Creek Indians, it is important to bear in mind that two types of Acts are involved. First, there are those Acts under which allotments were made and accepted. These Acts embody specific contracts or agreements with the Indian, and under them the Indian acquired certain vested rights of which Congress could not later deprive him. Second, there were the subsequent enactments of Congress which were in no sense contractual, and under which Congress was merely legislating with respect to the Indian.

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[3] The pertinent provisions of the various statutes concerning the allotment of lands to the Creeks are set forth in Appendix B, *infra*, pp. 35–45.

The Original Creek Agreement (Act of March 1, 1901), *infra*, p. 37, and the Supplemental Creek Agreement (Act of June 30, 1902), *infra*, p. 38, above referred to, were of the first type. They were in reality contracts with the Indians, and under them the Indian acquired certain vested rights. *Choate* v. *Trapp*, *supra*, 224 U. S. 665; *Carpenter* v. *Shaw*, *supra*, 280 U. S. 363. An examination of these two agreements reveals two important features as affecting this case. First, as an inducement to the Indian to forsake his former mode of living and accept allotments in severality, the agreements made certain concessions to him, chief among which, so far as this case is concerned, was the exemption of his homestead allotment from taxation. Second, realizing that the untutored Indian would be subject to the schemes and fraudulent practices of unscrupulous white men, Congress placed certain restrictions upon the alienation of the allotted lands and made provision for the supervision of Indian affairs by the Secretary of the Interior. These two features are clearly set forth in Section 7 of the Original Agreement of March 1, 1901, as amended by Section 16 of the Supplemental Agreement of June 30, 1902 (Appendix B, *infra*, p. 38). This Supplemental Agreement, after providing for the allotment to each Creek Indian of 160 acres of land, further provides:

> *Lands* allotted to citizens shall not
> * * * be *alienated* by the allottee or his

> heirs before the expiration of *five years* from the date of the approval of this supplemental agreement, except with the approval of the Secretary of the Interior. * * * (Italics supplied.)

Clearly this restriction on alienation was designed to protect the Indian against his own improvidence and to protect him from schemes and fraudulent practices of white men. *Sunderland* v. *United States, supra; Choctaw Lumber Co.* v. *Coleman*, 56 Okla. 377; *Crosbie* v. *Partridge*, 85 Okla. 186. But the agreement continues:

> Each citizen shall select from his allotment *forty acres of land*, * * * *as a homestead*, which shall * * * remain *nontaxable; inalienable*, and free from any incumbrance whatever for *twenty-one years* * * *. (Italics supplied.)

This is the only provision in either the original Creek Agreement or in the Supplemental Agreement relating to the subject of tax exemption. Under it the Indian acquired a vested right to hold his homestead tax-free for twenty-one years. *Choate* v. *Trapp, supra; Carpenter* v. *Shaw, supra.* But, clearly, there is nothing in this provision that, even by implication, exempts the sort of income involved in this case or a person having the taxpayer's status respecting such income. The provision is explicit. Of the total allotment of 160 acres, only the homestead of forty acres was made tax-exempt. *English* v. *Richardson, supra,* 224

U. S. 680. The exemption attached only to this particular land; it was not a personal privilege. *Choate* v. *Trapp, supra,* 224 U. S. 665, 675–676. The Indian, as such, was not made exempt, although it would have been a simple matter to have so provided had it been so intended. In thus specifically exempting the homestead, it seems clear enough, at least so far as the Federal taxing power was concerned, that all other property of the Indian, including the income therefrom, was left open to taxation. The doctrine of *expressio unius est exclusio alterius* is applicable.

The parties agreed only that the Indian's homestead should be tax-exempt. They made no agreement respecting the Government's right later to levy an income tax. The most that can be said of this agreement is that since the homestead was made tax-exempt, this might also operate to exempt the income derived from such homestead. This would be true only because a tax on such income might be deemed a direct tax on the homestead itself. *Pollock* v. *Farmers' Loan & Trust Co.,* 158 U. S. 601.[3] But this exemption, if it existed, would

[3] Even this is doubtful. In *People* v. *Wendell,* 188 N. Y. S. 344, 347, affirmed, 231 N. Y. 629, it was held that *income* from a mortgage was taxable despite a provision of law that the *mortgage* should be nontaxable. It was argued that a tax on income was in reality a tax on the property producing the income, citing *Pollock* v. *Farmers' Loan & Trust Co., supra,* but the court held that its problem was one of statutory construction and the intent of the legislature, and that such income was not exempt. This

be limited strictly to income produced by the homestead. Income produced by the other allotted land would be taxable. *Rentie* v. *Commissioner*, 21 B. T. A. 1230. Clearly, such exemption would not extend to the income here in question, which was derived, not from any of the Indian's lands, but from surplus funds invested by the Superintendent. Moreover, the exemption on the homestead was for only twenty-one years, from the date of the homestead deed, which date is not disclosed by this record. Thereafter, all income, including even the income from the homestead, was clearly taxable.

We submit there is nothing in either the original Creek Agreement or in the Supplemental Agreement which supports an exemption in this case.

The taxpayer relies (Br. 7) on the Act of May 27, 1908, c. 199, 35 Stat. 312 (Appendix B, *infra*, p. 40). This Act was of the second of the two types of Acts referred to above. As shown by its title it was designed simply to remove certain restrictions from some of the lands previously allotted to the

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case would seem applicable here. It can hardly be said that the parties to this agreement contracted with respect to Federal income taxation.

When this agreement was executed (1902), neither the Indians nor the Government had in mind the subject of income taxes. No such tax was then in existence. The Act of 1894 had been declared unconstitutional in 1895 and the Sixteenth Amendment was not adopted until 1913. Evidently the parties to the Agreement were interested only in securing an exemption from state taxation, since at that time the Federal Government levied no real estate tax, and, in view of the apportionment requirement, none was likely.

Indian. It in no sense embodied a contract or agreement with the Indian. It did not affect the rights of the Indians vested under the Supplemental Agreement of 1902, discussed above. *Choate* v. *Trapp, supra.* The Indian acquired no vested right in a public law of this kind, *Silver* v. *Silver,* 280 U. S. 117, 122, and it is difficult to see how this Act passed in 1908, at a time when we had no income-tax laws, can be held to qualify a later revenue Act levying a tax broadly on "every individual" upon income "from whatever source derived."

In any event the Act nowhere confers the privilege of tax-exemption. The only reference to taxation is in Section 4, *infra,* which provides that "all land from which restrictions have been or shall be removed shall be subject to taxation and all other civil burdens as though it were the property of other persons than allottees of the Five Civilized Tribes." As pointed out in *Shaw* v. *Oil Corp., supra,* 276 U. S. 575, 581, this section was adopted in response to representations that the revenue of the State of Oklahoma was insufficient for state purposes, that large areas of land within the State allotted to Indians were exempt from taxation as agencies of the Federal Government and that Indian citizens were enjoying the benefits of local government without taxation. Report of Senate Committee on Indian Affairs, S. Rep. No. 575, 60th Cong. 1st Sess.; Report of the House Committee on Indian Affairs, H. Rep. No. 1454, 60th Cong., 1st Sess. Thus this section served only to *remove* a

limitation theretofore existing on the *state's* power to tax certain *lands*. It in no way *imposed* a limitation on the *Federal Government's* power to tax the Indian's *income*. Nowhere does the Act exempt the Indian, as such, from taxation,[4] nor even, by implication, much less by clear expression, is the Indian's income made exempt. As stated in *Shaw* v. *Oil Corp., supra*, p. 581: "The Act of May 27, 1908, contains no express exemption from taxation of the proceeds of restricted lands." We submit there is nothing in the Act of 1908 that exempts the sort of income here involved or a person having the taxpayer's status respecting such income.

The taxpayer contends (Br. 9) that inalienability and nontaxability are natural concomitants and that it was the removal of restrictions by Section 4 of the 1908 Act that alone subjected an Indian's lands to any form of taxation, and since the taxpayer's income here was restricted, it should remain nontaxable until the restrictions are removed. But, as was pointed out in *Choate* v. *Trapp, supra*, 224 U. S. 665, 673, exemption from taxation and nonalienability are two separate and distinct subjects. One conferred a right that could not be taken away. The other imposed a limitation that

[4] On the contrary, Sections 4 and 9 of the Act, *infra*, p. 42, expressly subject a full-blood Indian, taking land by inheritance, to state taxation, despite his status, and it has been held that such full-blood may be taxed on the income from lands so inherited. *Pitman* v. *Commissioner*, 64 F. (2d) 740 (C. C. A. 10th); *Bagby* v. *United States*, 60 F. (2d) 80 (C. C. A. 10th).

Congress could remove at will. Moreover, the period of restriction and the period of nontaxation by the State were not necessarily the same. See also *Williams* v. *Johnson*, 239 U. S. 414, 420; *Jones* v. *Meehan*, 175 U. S. 1; *Weilep* v. *Audrain*, 36 Okla. 288, 128 Pac. 254; *Farris* v. *Union Cent. Life Ins. Co.*, 72 Okla. 220, 179 Pac. 919.

True, the State might not tax Indian lands prior to the removal of restrictions under Section 4 of the Act, but this is not because of any exemption conferred on the Indian by the Act, but because lands allotted to Indians remain subject to the control of Congress during the restrictive period, and, as Federal instrumentalities, cannot be taxed by the State without the assent of the Federal Government. *The Kansas Indians*, 5 Wall. 737; *United States* v. *Rickert*, 188 U. S. 432; *Gillespie* v. *Oklahoma*, 257 U. S. 501; *Childers* v. *Beaver*, 270 U. S. 555. But it does not follow, merely because the State may not tax lands prior to the removal of restrictions, that the Federal Government may not tax income prior thereto. As pointed out in *Heiner* v. *Colonial Trust Co.*, *supra*, Congress has been disposed to extend the income tax to all species of income despite immunity from state taxation. The compensation of many Federal officials is taxed under the 1928 Act here involved, and income from Government bonds is taxed, except when expressly exempted. *Helvering* v. *Stockholms Etc. Bank*, *supra*, 293 U. S. 84. As stated in *Chotean* v. *Burnet*, *supra*, p. 696:

> Royalties received by the government from mineral leases of Indian lands have been held to be beyond a State's taxing power (*Gillespie* v. *Oklahoma*, 257 U. S. 501; *Shaw* v. *Oil Corp.*, 276 U. S. 575) on the ground that, while in the possession of the United States they are a federal instrumentality, to be used to carry out a governmental purpose. *It does not follow, however, that they cannot be subject to a federal tax.* * * *. (Italics supplied.)

Moreover, it is to be observed that Section 1 of the Act gives the Secretary of the Interior general supervisory power over the proceeds from the sale or lease of allotted lands as well as over the lands themselves. *Parker* v. *Richard*, 250 U. S. 235; *Parker* v. *Riley*, 250 U. S. 66. The statute also gives the Secretary general power to remove restrictions, in whole or in part. Under his regulations (Appendix C, *infra*, p. 47), the Secretary provides for the unconditional removal of restrictions from the land of those Indians whom he may deem competent. He also authorizes the payment of restricted funds direct to competent Indians. Many Indians have been thus emancipated. Not so in this case, because the Secretary has not deemed this Indian competent to handle his own affairs. The significant point is that the restriction in this case exists, not by virtue of any express Act of Congress, but solely by virtue of the discretionary power conferred on the Secretary. But this discretionary action of the Secretary in continuing to impose re-

strictions on investments made by him for the Indian is not to be taken as the exercise by Congress of its power to exempt such investments or income therefrom from Federal taxation.

In *Shaw* v. *Oil Corp., supra,* 276 U. S. 575, this Court held that the mere act of the Secretary in imposing restrictions on lands purchased under his supervision for a full-blood Creek Indian with trust funds of that Indian, did not operate to exempt such lands from state taxation. There the Court said (pp. 578, 581, 582):

> * * * the mere act of the Secretary in imposing the restriction is not the exercise of any power which may reside in Congress to exempt them [restricted lands] from taxation.
>
> * * * * * *
>
> Little need be said as to the power of the Secretary of the Interior to exempt the land and its uses from taxation. The power, if it exists, is one conferred by Congress, but neither it nor the Secretary has in terms purported to make or authorize such an exemption.
>
> * * * * * *
>
> *It cannot be assumed that Congress* at a time when it was withdrawing allotted lands from their former exemption in order that Indian citizens might assume the just burdens of state taxation, *intended to extend a tax exemption by implication.* In any case the Secretary of the Interior has never, by rule or regulation or other action, purported

> to exempt such lands from state taxation. *No such action is to be implied from his authorized action in restricting the power of the Indian grantee to alienate the land.* * * * (Italics supplied.)

See also to the same effect, *United States* v. *Ransom*, 263 U. S. 691, affirming 284 Fed. 108 (C. C. A. 8th); *McCurdy* v. *United States*, 246 U. S. 263; *United States* v. *Gray*, 284 Fed. 103 (C. C. A. 8th); *United States* v. *Brown*, 8 F. (2d) 564 (C. C. A. 8th), certiorari denied, 270 U. S. 644; *United States* v. *Mummert*, 15 F. (2d) 926 (C. C. A. 8th). Since restrictions imposed by the Secretary do not exempt the Indian's lands from state taxation, we submit, *a fortiori* such restrictions do not exempt his income from Federal taxation.

But the taxpayer contends that the Indian is a ward of the Government and that the tax as to him is inconsistent with its policy toward him as a protector and conservator (Br. 9). But we submit the contrary is true. The taxpayer here became a citizen of the United States by virtue of Section 6 of the Act of February 8, 1887, as amended by the Act of March 3, 1901 (Appendix B, *infra*, p. 35). See also *Tiger* v. *Western Investment Co.*, *supra*, 221 U. S. 286. As pointed out in *Goudy* v. *Meath*, *supra*, 203 U. S. 146, 149, among the laws to which he, as a citizen, became subject, were those in respect to taxation. His property, unless exempt, became subject to taxation in the same manner as property belonging to other citizens, and the rule

of exemption for him must be the same as for other citizens; that is, that no exemption exists by implication, but must be clearly manifested. There is nothing inconsistent between this obligation of the taxpayer as a citizen, and the supervisory control exercised by the Interior Department over the Indian's property in his own interest. Since "there is nothing in citizenship incompatible with this guardianship" (*Heckman* v. *United States*, 224 U. S. 413, 436–437; *Brader* v. *James*, 246 U. S. 88, 96; *Tiger* v. *Western Investment Co.*, *supra*; *United States* v. *Nice*, 241 U. S. 591, 598), there is no inconsistency between guardianship and taxation.

On the other hand, it has been the progressive purpose of Congress gradually to relinquish control over the Indian's properties and affairs in order to educate him in responsibility, and prepare him for complete independence. As stated in *Choteau* v. *Burnet*, *supra* (p. 694):

> This plan has included imposing upon him both the responsibilities and the privileges of the owner of property, *including the duty to pay taxes.* * * *. (Italics supplied.)

See also *Shaw* v. *Oil Corp.*, *supra*, p. 579; *United States* v. *Nice*, *supra*, 241 U. S. 591, 598; *United States* v. *Waller*, 243 U. S. 452, 459; *McCurdy* v. *United States*, *supra*, 246 U. S. 263, 269.

Immunity from taxation would be inconsistent with one of the very purposes of Indian adminis-

tration—to educate the Indian in responsibility. *Shaw* v. *Oil Corp.*, *supra*, p. 381.

The relationship between the Government and the Indian is not essentially different from the usual guardianship relation. *Tiger* v. *Western Investment Co.*, *supra*, pp. 310–317; *United States* v. *Waller*, *supra*, p. 459. A guardian appointed to handle a minor's affairs must, under the Revenue Acts, report his ward's income. The fact that such ward cannot demand the full income to dispose of as he pleases does not exempt such income from taxation. So it is in this case. The fact that the Superintendent accumulated the income in trust for the benefit and ultimate use of the Indian, and the fact that such income was not subject to the taxpayer's immediate demand, does not create an exemption. See *Bagby* v. *United States*, 60 F. (2d) 80 (C. C. A. 10th).* And since a guardian for a minor is entitled to a fair compensation for his services on his ward's behalf, we see no reason why these Indian wards of the Government should not bear their full share of the tax burden.

That Congress never intended this income to escape taxation is made clear when we consider the

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* Section 143 (a) of the 1928 Revenue Act, *infra*, p. 33, requires "every fiduciary" to make a return for any individual, estate, or trust for which he acts. Such comprehensive language clearly covers this case, there being no exception made for trust estates of this character. The tax return in this case was properly filed by the Superintendent as guardian for the taxpayer. See Act of August 1, 1914, c. 222, Sec. 17, 38 Stat. 582, 598.

rulings of the Treasury Department, together with subsequent legislation on the subject.

At first the Treasury took the position that income from all original allotted lands was taxable (O. D. 1130, 5 Cumulative Bulletin 237; L. O. 1096, I—1 Cumulative Bulletin 64; I. T. 1730, II—2 Cumulative Bulletin 55), unless there was some specific agreement as to tax exemption in the Act under which lands were allotted (I. T. 1884, II—2 Cumulative Bulletin 62). Shortly thereafter the Attorney-General promulgated a series of rulings, upon which the taxpayer here relies (Br. 10–12). 34 Op. A. G. 75; 34 Op. A. G. 302; 34 Op. A. G. 439; 35 Op. A. G. 1. These rulings held that income from "allotted" lands, restricted by Congress against alienation, was not subject to the Federal income-tax laws during the restricted period.*

Two of these opinions were published by the Treasury Department in 1924 and 1925 as T. D. 3570 (III—1 Cumulative Bulletin 85) and T. D. 3754 (IV—2 Cumulative Bulletin 87). These opinions of the Attorney General, the Treasury accepted in part and rejected in part. They were construed as holding only that income from certain original allotted lands was exempt. But the

* Insofar as certain "dicta" in those opinions seem to support the taxpayer's position that the Revenue Acts do not apply to Indians as such, they must be regarded as unsound in view of the later opinions of this Court in *Choteau* v. *Burnet*, *supra*, *Heiner* v. *Colonial Trust Co.*, *supra*, and other cases cited above.

Treasury rejected the extreme view that the Indian as such was exempt from taxation, and ever since 1925 its position has been, at least so far as the Five Civilized Tribes are concerned, that income from original allotments, homestead or surplus, or such portion thereof as still remains in the hands of the original allottee as restricted lands is exempt from taxation, but that income from all other sources, including investment income of the kind here in question, is subject to tax. S. M. 4527, IV—2 Cumulative Bulletin 29; S. R. 8498, V—1 Cumulative Bulletin 183; S. M. 5632, V—1 Cumulative Bulletin 193; G. C. M. 2056, VI—2 Cumulative Bulletin 65; G. C. M. 2008, VII—1 Cumulative Bulletin 209; G. C. M. 6020, VIII—1 Cumulative Bulletin 63; G. C. M. 8066, IX—2 Cumulative Bulletin 316; G. C. M. 9621, X—2 Cumulative Bulletin 111.

In thus extending the exemption to all income from all allotted lands (homestead and surplus) of all members of the Five Tribes, the Treasury has been liberal with the Creek Indians. As pointed out above, any exemption must be found in the original agreements with the Indians, under which allotments were made, or in some other definite expression of Congress. In some of the original Indian Agreements, notably those with the Choctaws and Chickasaws (see *Choate* v. *Trapp, supra,* 224 U. S. 665, 668) the agreement was that *all* allotted lands should be nontaxable so long as title remains in the original allottee. As to such Indians it might

be said that income from such lands while held by the original allottee was also made exempt under the rule of the *Pollock* case, *supra,* although even this is doubtful. See footnote 3, *supra,* p. 13. Whatever the rule as to other Indians, so far as the Creeks are concerned, the only provision as to tax exemption is found in the Supplemental Creek Agreement of 1902, which, unlike in the case of the Choctaws and Chickasaws, exempted only the forty-acre homestead for twenty-one years (*English* v. *Richardson, supra,* 224 U. S. 680), other allotments were not exempted. So if any income-tax exemption ever existed as to the Creeks it was limited to the income from this forty acres for the twenty-one year period only. In its rulings above referred to the Treasury has apparently failed to differentiate between the various Indians and, as to the Creeks, liberally extends the exemption to income from their surplus allotments as well as from their homestead.[7]

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[7] A reference to the above-mentioned Treasury rulings will show that the Treasury has been influenced partly by the rulings of the Attorney General and partly by the fact that the Act of April 26, 1906, c. 1876, 34 Stat. 137, 144, Appendix, *infra,* p. 39, provided that:

"* * * all lands upon which restrictions are removed shall be subject to taxation, and the other lands shall be exempt from taxation as long as title remains in the original allottee."

It was thought that this statute conferred a specific exemption on the income as well as the land during the restricted period. But it is to be noted that this was only an Act of Congress and was not a contract or treaty with the Indian. It dealt with State, not Federal, taxation. It

But whether right or wrong in thus extending the exemption, the Treasury was clearly right in holding income from other sources, including investment income of the kind here in question, to be taxable. Whatever may be said of the early Indian treaties and statutes, they clearly do no more than exempt certain of the Indian lands. Any claim that Indian income is exempt must be predicated on the contention that a tax on the income is a direct tax on the land itself. Even if we concede, *arguendo*, that the original allotted lands remained nontaxable while restricted in the hands of the original allottee, and concede also that income from such lands also remained nontaxable, yet we are not here concerned with income derived from nontaxable land. The source of the income here is not the taxpayer's original allotted lands, but funds invested for the Indian by the Superintendent. The source of these investments is not shown by the record. The investments may have been with accumulated income from allotted homestead lands, or from allotted surplus lands or with proceeds from the sale of unallotted tribal lands credited to this Indian's account. In any event the source of the income in question is not the orig-

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related to taxes on land, not income, and finally it was superseded by the Act of May 27, 1908, relating to the same subject matter. *Coleman* v. *Davis*, 72 Okla. 248, 180 Pac. 281; *Chapco* v. *Chapman*, 76 Okla. 201, 170 Pac. 250, certiorari denied, 247 U. S. 508; cf. *Fink* v. *County Commissioners*, *supra*, 243 U. S. 390, 402. We think the Treasury has made too much of the Act of 1906.

inal allotment. When the funds producing the income were invested they became an independent source of income, which was not protected from taxation either by the Revenue Act of 1928 or by prior Acts of Congress under which the allotments were made. See *Snell v. Commissioner*, 10 B. T. A. 1081.

These rulings of the Treasury Department, published at various times since 1925, and holding that income of the kind here involved is taxable, have received implied Congressional approval through the reenactment, without pertinent change, of the Revenue Acts of 1926, 1928, 1932, and 1934. This approval is more definitely shown in a Joint Resolution of Congress, passed February 14, 1933 (No. 53, 72nd Cong., 1st Sess. [S. J. Res. 167]), Appendix B, *infra*, p. 45, which provides in part as follows:

> To carry out certain *obligations* to certain enrolled Indians *under tribal agreement*. * * * any person duly enrolled as a member of an Indian tribe who received in pursuance of a *tribal treaty* or *agreement* with the United States an *allotment of land which by the terms of said treaty or agreement was exempted partially or in total from taxation*, and from which land the restrictions *have been or have not been removed* and who was required or permitted contrary to law to pay any illegal or unauthorized Federal inheritance tax or Federal income tax on the rents, royalties, or other gains arising

> *from such allotted lands,* and who *under the law and rulings of the Treasury Department* have secured a refund of the taxes so illegally or erroneously collected but who did not receive interest on such refunds * * *, shall be allowed one year after the approval of this Act within which to file such claim, * * * it not being the policy of the Government to invoke or plead a statute of limitations to escape the *obligations of agreements* solemnly entered into with its Indian wards: * * * (Italics supplied.)

This resolution, we submit, clearly shows that Congress approved of the tax here in question. The purpose of this resolution is set forth in Senate Report No. 830, 72d Cong., 1st Sess., p. 2, as follows:

> The purpose of this resolution is to permit Indians who have received refunds of Federal inheritance or income taxes to file claims for interest also within a year from the passage of the resolution where interest was not included in the prior claim for refund of taxes. The filing of such claims in some cases at least would now be barred by the decision of the United States Circuit Court of Appeals in the case of *United States* v. *Richards* (27 Fed. (2) 284).
>
> Many of our Indians were guaranteed exemption from taxation on certain lands *by agreement* made with the Federal Government pursuant to the allotment of their tribal lands to individual members of the tribes, and it has been held that such exemp-

tion is a vested contractual property right which cannot legally be denied the Indians by Congress (*Choate* v. *Trapp*, 224 U. S. 665). In such cases the lands were therefore tax exempt for the specified period even though the restrictions be removed, and it follows that the income therefrom during such period of exemption from taxation is also nontaxable, pursuant to the decision of the Supreme Court of the United States in the case of *Pollock* v. *Farmers' Loan & Trust Company* (157 U. S. 429; 158 U. S. 601). By section 1 of the act of May 27, 1908 (35 Stat. L. 312), the restrictions were removed from the tax-exempt lands of a large number of Five Civilized Tribes allottees, and Federal income taxes have been collected from some of these Indians, since the removal of restrictions from their lands, on income received from lands that were tax exempt, which income was not subject to tax under the above-mentioned decision. (Italics supplied.)

See also Senate Report No. 797, 72d Cong., 1st Sess.; House Report No. 1567, 72d Cong., 1st Sess.

This resolution and the reports thereon show that Congress clearly recognized the distinction between income from tax exempt lands and income from other sources. They clearly contemplate that tax exemption should extend only to income from "allotted" lands which were specifically made exempt by "tribal treaty or agreement." This was an express recognition of the tax-exempt provi-

sions of the various "treaties and agreements" made with the Five Civilized Tribes and can only mean that all other income was deemed taxable.*

Moreover, the resolution dealt with income from tax exempt allotted lands irrespective of whether or not restrictions had been removed from the lands, thus clearly recognizing that the exemption depended upon tribal treaties or agreements, and not upon the question of whether or not the property or income was restricted.

It is to be observed, also, that the policy of the Government is clearly stated in the resolution to be the recognition of "the *obligations of agreements* solemnly entered into with its Indian wards." It was, therefore, not the policy to exempt the Indian merely because he was a ward of the Government.

Finally, it is to be noted that the resolution dealt with refunds made "under the law and rulings of the Treasury Department." We respectfully submit that this reference must have been to the existing practice in the Treasury Department as evidenced by the rulings above referred to. The resolution, therefore, is to be taken as a *pro tanto*

* The reference to "tribal treaty or agreement", so far as the Creeks were concerned, could only mean the Supplemental Creek Agreement of 1902, by which it was agreed that the forty-acre homestead was tax-exempt for 21 years. This was the only "tribal treaty or agreement" as affecting this case. The Acts of 1906 and 1908 were not such treaties or agreements. The reports referred to above bear us out in this.

approval of the rulings of the Treasury Department.

As further indicating Congressional approval of this practice, reference is made to the Act of May 10, 1928, c. 517, 45 Stat. 495, *infra*, p. 42. Section 3 of that Act provides that "all minerals, including oil and gas, produced on or after April 26, 1931, from restricted allotted lands * * *, shall be subject to all State and Federal taxes of every kind and character * * *."

We may assume that when this Act was passed Congress was familiar with the then position of the Treasury Department. See H. R. 1193, 70th Cong. 1st Sess.; S. R. 982, 70th Cong., 1st Sess. As stated above this position was that income from restricted allotments was tax-exempt, but income from other sources was subject to tax. But Congress was not content that even so much of the Indian's income should escape taxation. Far from pronouncing a policy of tax immunity to all Indian wards, Congress provided specifically that beginning April 26, 1931, the Indian should pay taxes on all mineral produced by his properties—even that produced by his restricted homestead.[9]

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[9] The fact that the Act was prospective from April 26, 1931 (the date of the removal of restrictions under the 1908 Act), does not mean that Congress was thereby sanctioning tax exemption of royalties produced by restricted allotments prior to that date. Section 5 of the Act, providing that "this Act shall not be construed * * * to exempt from taxation any lands which are subject to taxation under existing law", would indicate that Congress was leaving

It is to be noted that only "all minerals, including oil and gas", produced "from restricted allotted lands" were specifically made subject to the income tax. No mention was made of income of the sort here involved, for the obvious reason, we submit, that Congress, knowing of the existing Treasury position, deemed such taxable, anyway, and no specific provision was needed. There could have been no purpose in subjecting royalties from homesteads and other restricted allotments to tax and at the same time leaving investment income immune from tax.

We submt this Act of Congress indicates approval of the Treasury's then position that investment income of a restricted Indian was taxable, and a *pro tanto* disapproval of the position that income from his restricted allotments was nontaxable.

CONCLUSION

The decision of the Circuit Court of Appeals should be affirmed.

Respectfully submitted.

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MAY 1935.

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open the question of the taxability of such income under prior laws. Apparently the Act was passed to remove doubt on the subject, not to change the law.

APPENDIX A

Revenue Act Involved

Revenue Act of 1928, c. 852, 45 Stat. 791:

SEC. 11. NORMAL TAX ON INDIVIDUALS.

There shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax * * *

SEC. 12. SURTAX ON INDIVIDUALS.

(a) Rates of surtax. There shall be levied, collected, and paid for each taxable year upon the net income of every individual a surtax * * *

SEC. 22. GROSS INCOME.

(a) General definition. "Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever.

SEC. 143. FIDUCIARY RETURNS.

(a) Requirement of return. Every fiduciary * * * shall make under oath a return for any of the following individuals, estates, or trusts for which he acts, stating specifically the items of gross income thereof and the deductions and credits allowed under this title.

SEC. 161. IMPOSITION OF TAX.

(a) Application of tax. The taxes imposed by this title upon individuals shall apply to the income of estates or of any kind of property held in trust, * * *

APPENDIX B

TREATIES AND LEGISLATION AFFECTING THE CREEK NATION AND THE FIVE CIVILIZED TRIBES

Act of February 8, 1887, c. 119, 24 Stat. 388, 390:

> SEC. 6. * * *. And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life,[1] is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property.

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[1] Act of March 3, 1901, c. 868, 31 Stat. 1447:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section six of chapter one hundred and nineteen of the United States Statutes at Large numbered twenty-four, page three hundred and ninety, is hereby amended as follows, to wit: After the words "civilized life," in line thirteen of said section six, insert the words "and every Indian in Indian Territory."

Act of March 3, 1893, c. 209, 27 Stat. 612, 645:

SEC. 15. The consent of the United States is hereby given to the allotment of lands in severalty not exceeding one hundred and sixty acres to any one individual within the limits of the country occupied by the Cherokees, Creeks, Choctaws, Chickasaws, and Seminoles; and upon such allotments the individuals to whom the same may be allotted shall be deemed to be in all respects citizens of the United States. * * *

SEC. 16. The President shall nominate and, by and with the advice and consent of the Senate, shall appoint three commissioners to enter into negotiations with the Cherokee Nation, the Choctaw Nation, the Chickasaw Nation, the Muscogee (or Creek) Nation, the Seminole Nation, for the purpose of the extinguishment of the national or tribal title to any lands within that Territory now held by any and all of such nations or tribes, either by cession of the same or some part thereof to the United States, or by the allotment and division of the same in severalty among the Indians * * *.

Act of June 28, 1898, c. 517, 30 Stat. 495, 514:

SEC. 30. That the agreement made by the Commission to the Five Civilized Tribes with the commission representing the Muscogee (or Creek) tribe of Indians on the twenty-seventh day of September, eighteen hundred and ninety-seven, as herein amended, is hereby ratified and confirmed * * *.

* * * * *

1. There shall be allotted out of the lands owned by the Muscogee or Creek Indians in the Indian Territory to each citizen of said nation one hundred and sixty acres of land. * * *

* * * * *

5. The United States shall put each allottee in unrestricted possession of his allotment and remove therefrom all persons objectionable to the allottee.

* * * * *

34. Neither the town lots nor the allotment of land of any citizen of the Muscogee or Creek Nation shall be subjected to any debt contracted by him prior to the date of his patent.

* * * * *

Act of March 1, 1901, c. 676, 31 Stat. 861:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the agreement negotiated between the Commission to the Five Civilized Tribes and the Muscogee or Creek tribe of Indians at the city of Washington on the eighth day of March, nineteen hundred, as herein amended, is hereby accepted, ratified, and confirmed, * * *

* * * * *

3. All lands of said tribe, except as herein provided, shall be allotted among the citizens of the tribe by said commission so as to give each an equal share of the whole in value, as nearly as may be, in manner following: There shall be allotted to each citizen one hundred and sixty acres of land—boundaries to conform to the Government survey—which may be selected by him so as to include improvements which belong to him * * *

* * * * *

7. Lands allotted to citizens hereunder shall not in any manner whatsoever, or at any time, be incumbered, taken, or sold to secure or satisfy any debt or obligation con-

tracted or incurred prior to the date of the deed to the allottee therefor and such lands shall *not be alienable* by the allottee or his heirs at any time before the expiration of five years from the ratification of this agreement, except with the approval of the Secretary of the Interior.

Each citizen shall select from his allotment forty acres of land as a homestead, which shall *be nontaxable and inalienable* and free from any incumbrance whatever for twenty-one years, for which he shall have a separate deed, conditioned as above. * * *. (Italics supplied.)

Act of June 30, 1902, c. 1323, 32 Stat. 500, 503:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following supplemental agreement, submitted by certain commissioners of the Creek tribe of Indians, as herein amended, is hereby ratified and confirmed * * *.

* * * * * *

16. Lands allotted to citizens shall not in any manner whatever or at any time be encumbered, taken, or sold to secure or satisfy any debt or obligation nor be alienated by the allottee or his heirs before the expiration of five years from the date of the approval of this supplemental agreement, except with the approval of the Secretary of the Interior. Each citizen shall select from his allotment forty acres of land, or a quarter of a quarter section, as a homestead, which shall be and remain nontaxable, *inalienable,* and free from any incumbrance whatever for twenty-one years from the date of the deed therefor, and a separate deed shall be issued to each allottee for his homestead, in which

this condition shall appear. (Italics supplied.)

* * * * *

Act of April 26, 1906, c. 1876, 34 Stat. 137, 144:

SEC. 19. That no full-blood Indian of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole tribes shall have power to alienate, sell, dispose of, or encumber in any manner any of the lands allotted to him for a period of twenty-five years from and after the passage and approval of this Act, unless such restriction shall, prior to the expiration of said period, be removed by Act of Congress; and for all purposes the quantum of Indian blood possessed by any member of said tribes shall be determined by the rolls of citizens of said tribes approved by the Secretary of the Interior: *Provided, however,* That such full-blood Indians of any of said tribes may lease any lands other than homesteads for more than one year under such rules and regulations as may be prescribed by the Secretary of the Interior; * * *: *Provided further,* That all lands upon which restrictions are removed shall be subject to taxation, and the other lands shall be exempt from taxation as long as the title remains in the original allottee.

Act of June 16, 1906, c. 3335, 34 Stat. 267, 270:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of all that part of the area of the United States now constituting the Territory of Oklahoma and the Indian Territory, as at present described, may adopt a constitution and become the State of Oklahoma, as hereinafter provided: *Provided,* That nothing contained in the said constitution

shall be construed to limit or impair the rights of person or property pertaining to the Indians of said Territories (so long as such rights shall remain unextinguished) or to limit or affect the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property, or other rights by treaties, agreement, law, or otherwise, which it would have been competent to make if this Act had never been passed.

* * * * *

Third: That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian, tribe, or nation; and that until the title to any such public land shall have been extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal, and control of the United States. That land belonging to citizens of the United States residing without the limits of said State shall never be taxed at a higher rate than the land belonging to residents thereof; that no taxes shall be imposed by the State on lands or property belonging to or which may hereafter be purchased by the United States or reserved for its use.

Act of May 27, 1908, c. 199, 35 Stat. 312:

An Act for the removal of restrictions from part of the lands of allottees of the Five Civilized Tribes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from

and after sixty days from the date of this Act the status of the lands allotted heretofore or hereafter to allottees of the Five Civilized Tribes shall, as regards restrictions on alienation or incumbrance, be as follows: All lands, including homesteads, of said allottees enrolled as intermarried whites, as freedmen, and as mixed-blood Indians having less than half Indian blood including minors shall be free from all restrictions. All lands, except homesteads, of said allottees enrolled as mixed-blood Indians having half or more than half and less than three-quarters Indian blood shall be free from all restrictions. All homesteads of said allottees enrolled as mixed-blood Indians having half or more than half Indian blood, including minors of such degrees of blood, and all allotted lands of enrolled full-bloods, and enrolled mixed-bloods of three-quarters or more Indian blood, including minors of such degrees of blood, *shall not be subject to alienation, contract to sell, power of attorney, or any other incumbrance prior to April twenty-sixth, nineteen hundred and thirty-one,* except that the Secretary of the Interior may remove such restrictions, wholly or in part, under such rules and regulations concerning terms of sale and disposal of the proceeds for the benefit of the respective Indians as he may prescribe. The Secretary of the Interior shall not be prohibited by this Act from continuing to remove restrictions as heretofore, and nothing herein shall be construed to impose restrictions removed from land by or under any law prior to the passage of this Act. * * *. (Italics supplied.)

SEC. 2. That all lands other than homesteads allotted to members of the Five Civilized Tribes from which restrictions have

not been removed may be leased by the allottee if an adult, or by guardian or curator under order of the proper probate court if a minor or incompetent, for a period not to exceed five years, without the privilege of renewal: *Provided,* That leases of restricted lands for oil, gas or other mining purposes, leases of restricted homesteads for more than one year, and leases of restricted lands for periods of more than five years, may be made, with the approval of the Secretary of the Interior, under rules and regulations provided by the Secretary of the Interior, and not otherwise: * * *.

* * * * *

SEC. 4. *That all land from which restrictions have been or shall be removed shall be subject to taxation and all other civil burdens as though it were the property of other persons than allottees of the Five Civilized Tribes: Provided,* That allotted lands shall not be subjected or held liable, to any form of personal claim, or demand, against the allottees arising or existing prior to the removal of restrictions, other than contracts heretofore expressly permitted by law. (Italics supplied.)

* * * * *

SEC. 9. That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land: * * *.

Act of May 10, 1928, c. 517, 45 Stat. 495–496:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the restrictions against the alienation, lease, mortgage, or other encumbrance of the lands allotted to members of the Five Civilized

Tribes in Oklahoma, enrolled as of one-half or more Indian blood, be, and they are hereby, extended for an additional period of twenty-five years commencing on April 26, 1931: *Provided,* That the Secretary of the Interior shall have the authority to remove the restrictions, upon the applications of the Indian owners of the land, and may remove such restrictions, wholly or in part, under such rules and regulations concerning terms of sale and disposal of the proceeds for the benefit of the respective Indians as he may prescribe.

* * * * *

SEC. 3. That all minerals, including oil and gas, produced on or after April 26, 1931, from restricted allotted lands of members of the Five Civilized Tribes in Oklahoma, or from inherited restricted lands of full-blood Indian heirs or devisees of such lands, shall be subject to all State and Federal taxes of every kind and character the same as those produced from lands owned by other citizens of the State of Oklahoma; and the Secretary of the Interior is hereby authorized and directed to cause to be paid, from the individual Indian funds held under his supervision and control and belonging to the Indian owners of the lands, the tax or taxes so assessed against the royalty interest of the respective Indian owners in such oil, gas, and other mineral production.

SEC. 4. That on and after April 26, 1931, the allotted, inherited, and devised restricted lands of each Indian of the Five Civilized Tribes in excess of one hundred and sixty acres shall be subject to taxation by the State of Oklahoma under and in accordance with the laws of that State, and in all respects as unrestricted and other lands:

Provided, That the Indian owner of restricted land, if an adult and not legally incompetent, shall select from his restricted land a tract or tracts, not exceeding in the aggregate one hundred and sixty acres, to remain exempt from taxation and shall file with the superintendent for the Five Civilized Tribes a certificate designating and describing the tract or tracts so selected: *And provided further,* That in cases where such Indian fails, within two years from date hereof, to file such certificate, and in cases where the Indian owner is a minor or otherwise legally incompetent, the selection shall be made and certificate prepared by the superintendent for the Five Civilized Tribes; * * *: *Provided,* That the tax exemption shall not extend beyond the period of restrictions provided for in this Act: *And provided further,* That the tax-exempt land of any such Indian allottee, heir, or devisee shall not at any time exceed one hundred and sixty acres.

SEC. 5. That this Act shall not be construed to reimpose restrictions heretofore or hereafter removed by the Secretary of the Interior or by operation of law, nor to exempt from taxation any lands which are subject to taxation under existing law.

Act of January 27, 1933, c. 23, 47 Stat. 777:

* * * That all funds and other securities now held by or which may hereafter come under the supervision of the Secretary of the Interior, belonging to and only so long as belonging to Indians of the Five Civilized Tribes in Oklahoma of one-half or more Indian blood, enrolled or unenrolled, are hereby declared to be restricted and shall remain subject to the jurisdiction of the said Secretary until April 26, 1956, subject to

expenditures in the meantime for the use and benefit of the individual Indians to whom such funds and securities belong, * * * *And provided further,* That all minerals, including oil and gas, produced from said land so acquired shall be subject to all State and Federal taxes as provided in section 3 of the Act approved May 10, 1928 (45 Stat. L. 495).

* * * * *

S. J. Res. No. 167, 72d Cong., 1st Sess., to carry out certain obligations to certain enrolled Indians under tribal agreement (c. 65, 47 Stat. 807):

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That any person duly enrolled as a member of an Indian tribe who received in pursuance of a tribal treaty or agreement with the United States an allotment of land which by the terms of said treaty or agreement was exempted partially or in total from taxation, and from which land the restrictions have been or have not been removed and who was required or permitted contrary to law to pay any illegal or unauthorized Federal inheritance tax or Federal income tax on the rents, royalties, or other gains arising from such alloted lands, and who under the law and rulings of the Treasury Department have secured a refund of the taxes so illegally or erroneously collected but who did not receive interest on such refunds in accordance with the laws and the regulations in force at the time the refund was secured and who have failed to file a claim for the allowance of such interest, shall be allowed one year after the approval of this Act within which to file such claim, and if otherwise entitled thereto may recover such interest on such illegally col-

lected taxes in the same manner and to the same extent as if such claims for interest had been theretofore duly filed as required by law, it not being the policy of the Government to invoke or plead a statute of limitations to escape the obligations of agreements solemnly entered into with its Indian wards: * * *

APPENDIX C

Regulations of the Secretary of the Interior Promulgated July 7, 1925, Governing Leasing and Removal of Restrictions on Land of Members of the Five Civilized Tribes

ROYALTIES

* * * * *

29. * * * That the said superintendent or other officer in charge of the office of the Superintendent for the Five Civilized Tribes is authorized in his discretion, where considered for the best interest of any adult, minor, or incompetent lessor, or his or her heirs, for whose account royalties, rents, or payments accruing under any lease have been paid to said superintendent, to withhold the disbursement of such royalties, rents, or payments, wholly or in part, from any such adult or guardian or curator of any such minor or incompetent, or his or her heirs, until such time or times as the payment thereof is considered best for the benefit of said lessor or his or her heirs.

And provided further, That in such individual cases or classes of cases as the Secretary of the Interior may direct the Superintendent for the Five Civilized Tribes shall cause such payments as may be authorized to be made out of the royalties and other individual Indian funds of the restricted Indians, minors, and incompetents, to be paid direct to the Indians entitled thereto

or to be otherwise paid out for their benefit and use, as the Secretary of the Interior may authorize in said cases. * * *

REMOVAL OF RESTRICTIONS

* * * * * *

1. Adult members of the Five Civilized Tribes whose allotments cannot be sold or encumbered except after removal of restrictions therefrom by the Secretary of the Interior provided by the above-quoted provisions of law, and who desire to have the restrictions removed from all or part of such allotment, shall apply to the Superintendent for the Five Civilized Tribes, through the field clerk of the district in which the applicant resides; the application to be made in duplicate on forms which have been prescribed and will be furnished free of charge on application to the Superintendent for the Five Civilized Tribes or any field clerk.

2. When an application is received by the field clerk, he shall, after investigation, including a personal interview with the applicant, forward the application with report and recommendation to the Superintendent for the Five Civilized Tribes to be transmitted with his report and recommendation for such action as the Secretary of the Interior may deem proper.

3. If the Secretary of the Interior finds that any applicant for the removal of restrictions should have the unrestricted control of his allotment or a part thereof, he will remove the restrictions wholly or in part from the allotment or a part thereof without conditions concerning terms of sale and disposal of the proceeds.

4. When, however, the Secretary of the Interior finds it to be for the best interest of any applicant that all or part of his restricted lands should be sold with conditions concerning terms of sale and disposal of the proceeds, he will remove the restrictions, to become effective only and simultaneously with the execution of deed by said applicant and issue an order specifically providing the terms under which the land may be sold and providing for the disposal of the proceeds.

* * * * * *

8. All moneys received by the said cashier for the Five Civilized Tribes or his successor in authority as consideration for land, including moneys received on account of deferred payments and accrued interest thereon, shall be deposited or held to the credit of the proper allottee in individual Indian accounts, and be subject to the rules, regulations, and orders of this department governing the holding of moneys so deposited and the disbursement thereof.

* * * * *

11. In all cases where purchases of automobiles, horses, wagons, buggies, cattle, agricultural implements, or other personal property are made for individual Indians, payments for which are made from moneys received from the sale of restricted allotted lands, or from other moneys held under the control of the Department of the Interior, the Superintendent for the Five Civilized Tribes will, when in his judgment it is to the Indians' best interest, cause bill of sale to be executed by the vendor or vendors conveying property purchased to the United States, to be held in trust for the use and

benefit of the respective allottees or their heirs who are of the restricted class.

* * * * *

15. In any case where lands are purchased for the use and benefit of any citizen of the Five Civilized Tribes of the restricted class, payment for which is made from proceeds arising from the sale of restricted allotted land or other moneys held under the control of the Department of the Interior, the Superintendent for the Five Civilized Tribes shall cause conveyance of such lands to be made on form of conveyance containing an habendum clause against alienation or encumbrance until April 26, 1931, * * *.

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